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No. 97-26

COMPLETED

TAX CONVENTION WITH THE REPUBLIC OF AUSTRIA

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

THE CONVENTION BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF AUSTRIA FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON ESTATES, INHERITANCES, GIFTS, AND GENERATION-SKIPPING TRANSFERS, SIGNED AT VIENNA ON JUNE 21, 1982

AUGUST 10, 1982.—Convention was read the first time and, together with the accompanying papers, referred to the Committee on Foreign Relations and ordered to be printed for the use of the Senate

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U.S. GOVERNMENT PRINTING OFFICE

89-118 O WASHINGTON: 1982

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LETTER OF TRANSMITTAL

THE WHITE HOUSE, *August 10, 1982.*

To the Senate of the United States:

I transmit herewith, for Senate advice and consent to ratification, the Convention between the United States of America and the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Estates, Inheritances, Gifts, and Generation-skipping Transfers, signed at Vienna on June 21, 1982.

The Convention is the first of its kind to be negotiated between the United States and Austria. It will apply, in the United States, to the Federal estate tax, the Federal gift tax and the Federal tax on generation-skipping transfers and, in Austria, to the inheritance and gift tax.

A principal feature of the Convention is that the country of the transferor's domicile may tax transfers of estates and gifts and generation-skipping transfers on a worldwide basis, provided that it relieves the tax on specified types of property taxable on a situs basis.

I recommend that the Senate give early and favorable consideration to the Convention and give its advice and consent to ratification.

RONALD REAGAN.

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LETTER OF SUBMITTAL

DEPARTMENT OF STATE,
Washington, D.C., July 30, 1982.

The PRESIDENT,
The White House.

THE PRESIDENT: I have the honor to submit to you, with a view to its transmission to the Senate for advice and consent to ratification, the Convention between the United States of America and the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to taxes on Estates, Inheritances, Gifts, and Generation-skipping Transfers, signed at Vienna on June 21, 1982.

The convention with Austria is similar in principle to the United States estate and gift tax convention with the United Kingdom, which entered into force November 11, 1979 and the estate and gift tax convention with France, which entered into force October 1, 1980. It is also similar to the United States model estate and gift tax convention, published by the Treasury Department on December 8, 1980. The details of some provisions, however, differ from those in the United Kingdom or French conventions, or the United States model.

Under the Convention, the country of the transferor's domicile may tax transfers of estates and gifts ("transfers") and generation-skipping transfers ("deemed transfers") on a worldwide basis, provided it relieves the tax on specified types of property taxable on a situs basis. (Real property and certain business assets are taxable in the Contracting State where they are situated). The Convention also allows the United States to tax transfers and deemed transfers of citizens, provided a credit is given to them for tax paid to Austria.

The Convention provides rules for determining which State has the right to tax on a worldwide basis in the case of an individual who is domiciled in both Contracting States at the time of transfer or deemed transfer. It provides that a United States citizen who is domiciled in both the United States and Austria shall be deemed to be domiciled in the United States if he was not domiciled in Austria, under Austrian law, for at least five of the ten years preceding the relevant transfer or deemed transfer. The effect of this rule is that Austria generally may not subject the transfers or deemed transfers of a United States citizen and domiciliary to tax on a worldwide basis if he has been domiciled in Austria for less than five of the previous ten years. Where the five out of ten rule does not apply, the Convention provides a set of additional rules for resolving the issue of domicile. The rules for determining domicile are reciprocal.

The Convention will enter into force on the first day of the third month following the month in which the instruments of ratification are exchanged. Its provisions shall apply to transfers and deemed transfers occurring on or after the date of entry into force.

A technical memorandum explaining in detail the provisions of the Convention is being prepared by the Department of Treasury and will be submitted to the Senate Committee on Foreign Relations.

The Department of the Treasury, with the cooperation of the Department of State, was primarily responsible for the negotiation of the Convention. It has the approval of both Departments.

Respectfully submitted.

GEORGE P. SHULTZ.

Convention Between the United States of America and the Republic of Austria for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Estates, Inheritances, Gifts, and Generation-Skipping Transfers

The United States of America and the Republic of Austria, desiring to conclude a Convention for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on estates, inheritances, gifts, and generation-skipping transfers, have agreed as follows:

ARTICLE 1

Scope

1. Except as otherwise provided in this Convention, this Convention shall apply to:

(a) transfers of estates of individuals whose domicile at their death was in one or both of the Contracting States;

(b) transfers of property by gift of individuals whose domicile at the time of gift was in one or both of the Contracting States; and

(c) generation-skipping transfers of deemed transferors whose domicile at the time of deemed transfer was in one or both of the Contracting States.

2. This Convention shall not restrict in any manner any exclusion, exemption, deduction, credit, or other allowance now or hereafter accorded:

(a) by the laws of either Contracting State; or

(b) by any other agreement between the Contracting States.

ARTICLE 2

Taxes Covered

1. The taxes to which this Convention applies are:

(a) In the United States: the Federal estate tax; the Federal gift tax; and the Federal tax on generation-skipping transfers.

(b) In Austria: the inheritance and gift tax.

2. This Convention shall apply also to any identical or substantially similar taxes which are imposed by a Contracting State after the date of signature of this Convention in addition to, or in place of, the existing taxes. The competent authorities of the Contracting States shall notify each other of any changes which have been made in their respective taxation laws and shall notify each other of any official published material concerning the application of this Convention, including explanations, regulations, rulings, and judicial decisions.

3. For the purpose of Article 10, this Convention shall also apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof. For the purpose of Article 12, this Convention shall also apply to taxes of every kind imposed by a Contracting State.

ARTICLE 3

General Definitions

1. For the purpose of this Convention:

(a) the term "United States" means the United States of America, but does not include Puerto Rico, the Virgin Islands, Guam, or any other United States possession or territory;

(b) the term "Austria" means the Republic of Austria;

(c) the terms "Contracting State" and "the other Contracting State" mean the United States or Austria, as the context requires;

(d) the term "competent authority" means:

(i) in the United States: the Secretary of the Treasury or his delegate, and

(ii) in Austria: the Federal Minister of Finance.

2. As regards the application of this Convention by a Contracting State, any term not defined therein shall, unless the context otherwise requires and subject to the provisions of Article 11, have the meaning which it has under the laws of that State concerning the taxes to which this Convention applies.

ARTICLE 4

Fiscal Domicile

1. For the purposes of this Convention, an individual has a domicile:

(a) in the United States, if he is a resident thereof under United States law;

(b) in Austria, if he is resident („ Wohnsitz" oder „gewöhnlicher Aufenthalt") in Austria for the purposes of Austrian tax.

2. Where by reason of the provisions of paragraph 1 an individual was domiciled in both Contracting States, then, subject to the provisions of paragraph 3, his status shall be determined as follows:

(a) the individual shall be deemed to have been domiciled in the State in which he had a permanent home available; if such individual had a permanent home available in both States, he shall be deemed to have been domiciled in the State with which his personal and economic relations were closer (center of vital interests);

(b) if the State to which the individual's center of vital interests was closer cannot be determined, or if he had no permanent home available in either State, he shall be deemed to have been domiciled in the State in which he had an habitual abode;

(c) if the individual had an habitual abode in both States or in neither of them, the domicile shall be deemed to be in the State of which he was a citizen;

(d) if the individual was a citizen of both States or of neither of them, the competent authorities of the Contracting States shall endeavor to settle the question by mutual agreement.

3. Where an individual was

(a) a citizen of one Contracting State, but not the other Contracting State,

(b) within the meaning of paragraph 1 domiciled in both Contracting States, and

(c) within the meaning of paragraph 1 domiciled in the other Contracting State in the aggregate less than five years (including periods of temporary absence) during the preceding ten-year period,

then the domicile of that individual shall be deemed, notwithstanding the provisions of paragraph 2, to have been in the Contracting State of which the individual was a citizen.

ARTICLE 5

Real Property

1. Transfers and deemed transfers by an individual domiciled in a Contracting State of real property which is situated in the other Contracting State may be taxed by that other State.

2. The term "real property" shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to real property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of real property, and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources, and other natural resources; ships, boats, and aircraft shall not be regarded as real property.

ARTICLE 6

Business Property of a Permanent Establishment and Assets Pertaining to a Fixed Base Used for the Performance of Independent Personal Services

1. Except for assets referred to in Article 5, transfers and deemed transfers of assets by an individual domiciled in a Contracting State, forming part of the business property of a permanent establishment situated in the other Contracting State, may be taxed by that other State.

2. For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

3. The term "permanent establishment" shall include especially:

(a) a branch;

(b) an office;

(c) a factory;

(d) a workshop; and

(e) a mine, oil or gas well, quarry, or any other place of extraction of natural resources.

4. A building site or construction or installation project, or an installation or drilling rig or ship being used for the exploration or development of natural resources, constitutes a permanent establishment in a Contracting State only if it has remained in that State more than twelve months.

5. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

(a) the use of facilities solely for the purpose of storage, display, or delivery of goods or merchandise belonging to the enterprise;

(b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display, or delivery;

(c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

(d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

(e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;

(f) the maintenance of a fixed place of business solely for any combination of the activities mentioned in subparagraphs a) to e).

6. Except for assets described in Article 5, transfers and deemed transfers of assets by an individual domiciled in a Contracting State, pertaining to a fixed base situated in the other Contracting State and used for the performance of independent personal services, may be taxed by that other State.

ARTICLE 7

Property Not Expressly Mentioned

1. Subject to the provisions of paragraph 1 of Article 9, transfers and deemed transfers of property other than property referred to in Articles 5 and 6, by an individual domiciled in a Contracting State, shall be taxable only by that State.

2. If by the law of a Contracting State any right or interest is regarded as property not falling within Articles 5 or 6, but by the law of the other Contracting State that right or interest is regarded as property falling within those Articles, then the nature of the right or interest shall be determined by the law of the Contracting State which is not the State of the deceased's, deemed transferor's or donor's domicile.

ARTICLE 8

Deductions and Exemptions

1. Debts especially secured on any property referred to in Article 5 shall be deducted from or shall reduce the value of that property. Debts, not being especially secured on any property referred to in Article 5, which are represented by the acquisition, conversion, repair or upkeep of any such property, shall be deducted from the value of that property.

2. Subject to paragraph 1, debts pertaining to a permanent establishment referred to in paragraph 1 of Article 6 or to a fixed base referred to in paragraph 6 of Article 6 shall be deducted from the value of the permanent establishment or the fixed base, as the case may be.

3. If a debt exceeds the value of the property from which it is deductible or whose value it reduces in a Contracting State, according to paragraphs 1 or 2, the excess shall be deducted from the value of any other property taxable by that State.

4. Other debts shall be deducted from the value of property to which paragraph 1 of Article 7 applies.

5. Any excess still remaining in one Contracting States after the deductions referred to in paragraphs 3 or 4 shall be deducted from the value of the property liable to tax in the other Contracting State.

6. Notwithstanding the provisions of paragraph 2 of Article 1, if any debt is deducted in accordance with the provisions of this Article, no deduction shall be allowed for any debt pursuant to a law of a Contracting State providing for a different allocation.

ARTICLE 9

Methods for Elimination of Double Taxation

1. The provisions of this Convention shall not preclude the United States from taxing transfers or deemed transfers by its citizens, in accordance with the provisions of its law, as if this Convention had not come into effect. For this purpose the term "citizen" shall include a former citizen whose loss of citizenship had as one of its principal purposes the avoidance of tax (including, for this purpose, federal income tax), but only for a period of ten years following such loss. The provisions of this paragraph shall not affect the benefits conferred by paragraphs 2, 3, and 6 of this Article, or by Articles 10 or 11.

2. Where the United States imposes tax by reason of an individual's domicile therein or citizenship thereof, double taxation shall be avoided in the following manner:

(a) where Austria imposes tax with respect to a transfer or deemed transfer of property in accordance with Articles 5 or 6, the United States shall allow as a credit against the tax calculated according to its law with respect to such transfer or deemed transfer an amount equal to the tax paid to Austria with respect to such transfer or deemed transfer;

(b) if the individual was a citizen of the United States and was domiciled in Austria at the date of his death, gift, or deemed transfer, then the United States shall allow as a credit against the tax calculated according to its law with respect to the transfer or deemed transfer of property (other than property whose transfer or deemed transfer the United States may tax in accordance with Articles 5 or 6), an amount equal to the tax paid to Austria with respect to such transfer or deemed transfer. This subparagraph shall not apply to a former United States citizen whose loss of citizenship had as one of its principal purposes the avoidance of United States tax (including, for this purpose, federal income tax).

3. If the United States imposes tax upon the transfer of an estate, the credit allowed by paragraph 2 shall include credit for any tax imposed by Austria upon a prior gift of property made by the decedent, if the transfer of such property is subject to tax on the transfer of the estate imposed by the United States.

4. Any credit allowed by paragraphs 2 or 3 of this Article shall not exceed the part of the United States tax, as computed before the credit is given, which is attributable to the transfer or deemed transfer of property in respect of which a credit is allowable under such paragraphs.

5. Where Austria imposes tax by reason of the decedent's or the donor's domicile, double taxation shall be avoided in the following manner:

(a) Austria shall exempt from tax any property which, in relation to the same event, may be taxed in the United States in accordance with the provisions of Articles 5 and 6;

(b) Austria shall also exempt from tax any property which, in relation to a previous gift or deemed transfer and in accordance with Articles 5 to 7 of the Convention may have been taxed in the United States; however, it shall not exempt any property which it may have taxed in accordance with Articles 5 and 6 of the Convention;

(c) Austria may in calculating the amount of tax on any remaining property take into account the exempted property.

6. Any claim for credit of Austrian tax or for refund of United States tax founded on the provisions of this Article may be made until two years after the final determination (administrative or judicial) and payment of tax for which any credit under this Article is claimed, provided that the determination and payment are made within ten years of the date of death, gift, or deemed transfer. The competent authorities may by mutual agreement extend the ten year time limit if circumstances prevent the determination and payment within such period of the taxes which are the subject of the claim for credit. Any refund based solely on the provisions of this Convention shall be made without payment of interest on the amount so refunded.

ARTICLE 10

Nondiscrimination

1. Citizens of a Contracting State shall not be subjected in the other State to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which citizens of that other State in the same circumstances are or may be subjected. This provision shall also apply to persons who are not domiciled in a Contracting State. However, for purposes of United States taxation United States citizens not domiciled in the United States are not in the same circumstances as citizens of Austria not domiciled in the United States.

2. Corporations created or organized under the laws of either Contracting State, the capital of which is wholly or partly owned or controlled directly or indirectly by one or more individual residents of

the United States, shall not be subject in Austria to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which such corporations would be subject if their capital were similarly owned or controlled by individual residents of Austria. The principle of the preceding sentence shall apply equally to United States taxation of corporations created or organized under the laws of either Contracting State which are wholly or partly owned, directly or indirectly, by one or more individual residents of Austria.

3. The provisions of this Article shall apply to taxes of every kind and description imposed by a Contracting State or a political subdivision or local authority thereof.

ARTICLE 11

Mutual Agreement Procedure

1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Convention, he may, irrespective of the remedies provided by the domestic laws of those States, present his case to the competent authority of the Contracting State of which he is a resident or citizen. Such presentation must be made within one year after a claim, under this Convention, for exemption, credit, or refund has been finally settled or rejected.

2. The competent authority shall endeavor, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting State, with a view to the avoidance of taxation not in accordance with the Convention. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting States.

3. The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of the Convention. They may also consult together for the elimination of double taxation in cases not provided for in the Convention.

4. The competent authorities of the Contracting States may communicate with each other directly for the purpose of reaching an agreement in the sense of the preceding paragraphs.

ARTICLE 12

Exchange of Information

1. The competent authorities of the Contracting States shall spontaneously or upon request exchange such information as is necessary for carrying out the provisions of this Convention or of the domestics laws of the Contracting States concerning the taxes covered by this Article insofar as the taxation there under is not contrary to the Convention. The competent authorities of the Contracting States may agree on information which shall be furnished on a regular basis. The exchange of information is not restricted by Article 1. Any informa-

tion received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, or the oversight of the administration of the taxes covered by this article. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

2. In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; or

(c) to supply information which would disclose any trade, business, industrial, commercial, or professional secret or trade process, or information, the disclosure of which would be contrary to public policy.

3. If information concerning taxes is requested by a Contracting State in accordance with this Article, the other Contracting State shall obtain the information to which the request relates in the same manner and to the same extent as if the tax of the first-mentioned State were the tax of that other State and were being imposed by that other State. If specifically requested by the competent authority of a Contracting State, the competent authority of the other Contracting State shall provide information under this Article in the form of depositions of witnesses and authenticated copies of unedited original documents (including books, papers, statements, records, accounts, or writings), to the same extent such depositions and documents can be obtained under the laws and administrative practices of such other State with respect to its own taxes.

4. The tax authorities of a Contracting State may deliver documents to persons in the other Contracting State by using postal services. Each Contracting State shall, for purposes of its taxes, determine in accordance with its domestic law the legal efficacy or sufficiency of documents so delivered.

5. For the purpose of this Article, this Convention shall apply to taxes of every kind imposed by a Contracting State.

ARTICLE 13

Diplomatic Agents and Consular Officers

1. Nothing in this Convention shall affect the fiscal privileges of diplomatic agents or consular officers under the general rules of international law or under the provisions of special agreements.

2. This Convention shall not apply to officials of international organizations or members of a diplomatic or consular mission of a third State who were not treated as being domiciled in either Contracting State in respect of taxes on estates, inheritances, gifts, or generation-skipping transfers as the case may be.

ARTICLE 14

Entry Into Force

1. This Convention shall be subject to ratification. The instruments of ratification shall be exchanged at Washington as soon as possible.

2. This Convention shall enter into force on the first day of the third month following that month in which the instruments of ratification have been exchanged, and its provision shall apply to transfers of estates of individuals dying, gifts made, and generation-skipping transfers deemed made on or after that date.

ARTICLE 15

Termination

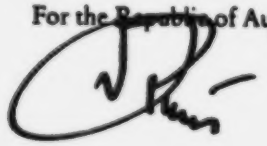
This Convention shall remain in force until terminated by a Contracting State. Either Contracting State may terminate the Convention at any time after five years from the date on which this Convention enters into force provided that at least six months prior written notice of termination has been given through diplomatic channels. In such event, the Convention shall have no effect in respect of transfers of estates of individuals dying, gifts made, and deemed transfers occurring after the December 31 next following the date of termination specified in the notice of termination.

In witness thereof the Plenipotentiaries of the two Contracting States, duly authorized thereto, have signed the present Convention and affixed thereto their seals.

Done at Vienna, Austria, in duplicate, in the English and German languages, the two texts having equal authenticity, this 21st day of June, 1982.

For the United States of America:

For the Republic of Austria:



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